

AMENDED IN SENATE APRIL 13, 2010

SENATE BILL

No. 1349

Introduced by Senator Cogdill

February 19, 2010

~~An act to add Section 2080.3 to, and to add and repeal Sections 2080.2 and 2080.5 of, the Fish and Game Code, relating to endangered species.~~
An act to add and repeal Section 2080.2 of the Fish and Game Code, relating to endangered species.

LEGISLATIVE COUNSEL'S DIGEST

SB 1349, as amended, Cogdill. Endangered species: experimental populations: *Chinook salmon*.

The Federal Endangered Species Act of 1973 (FESA) directs federal agencies, in consultation with the Secretary of the Interior or the Secretary of Commerce, as appropriate, to carry out conservation programs for endangered species listed under FESA. FESA generally prohibits activities affecting these threatened and endangered species unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. FESA provides for enhancement of survival permits to allow actions necessary for the establishment and maintenance of experimental populations designated pursuant to that act.

The California Endangered Species Act (~~state act~~) (CESA) prohibits the taking of an endangered or threatened species, except as specified. The Department of Fish and Game may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated. Existing law provides that if any person obtains from the Secretary of the Interior or the Secretary of Commerce an incidental take statement or incidental take permit

pursuant to the federal Endangered Species Act (federal act) *FESA* that authorizes the taking of an endangered species or threatened species listed pursuant to the federal act *FESA* and that is an endangered species, threatened species, or candidate species pursuant to the state act *CESA*, no further authorization or approval is necessary under the state act *CESA* for that person to take the endangered species, threatened species, or candidate species identified in, and in accordance with, the incidental take statement or incidental take permit, if that person notifies the Director of Fish and Game, as specified, and the director determines that the statement or permit is consistent with the state act *CESA*.

~~This bill would establish provisions that parallel those federal incidental take provisions for a person who obtains a federal enhancement of survival permit. Those enhancement of survival permit provisions would be repealed if federal law alters the requirements for issuing an enhancement of survival permit. The bill would also provide that the state act does not prohibit the take, or the incidental take, of any endangered, threatened, or candidate species, if the Secretary of the Interior or the Secretary of Commerce designates, as prescribed, an experimental population of an endangered or threatened species that is listed pursuant to certain provisions of the federal act and regulations adopted thereto, and the take, or incidental take, occurs in conformance with those provisions.~~

~~The bill, until January 1, 2020, would authorize the department to authorize the take of 3 experimental populations, as defined, of endangered species, threatened species, or candidate species listed pursuant to the state act in defined management zones.~~

This bill would provide that a person who obtains a federal enhancement of survival permit that authorizes the take of spring run Chinook salmon that has been designated as an experimental population pursuant to FESA, would require no further authorization or approval under CESA for that person to take that species as identified in, and in accordance with, the enhancement of survival permit, if that person notifies the director of the enhancement of survival permit. The provisions of the bill would remain in effect only until the effective date of an amendment to FESA that alters the requirements for issuing an enhancement of survival permit.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 2080.2 is added to the Fish and Game*
2 *Code, to read:*

3 2080.2. (a) *Notwithstanding any other provision of this*
4 *chapter, but subject to subdivision (c), if any person obtains from*
5 *the Secretary of the Interior or the Secretary of Commerce an*
6 *enhancement of survival permit pursuant to subparagraph (A) of*
7 *paragraph (1) of subdivision (a) of Section 1539 of Title 16 of the*
8 *United States Code that authorizes the take of spring run Chinook*
9 *salmon (*Oncorhynchus tshawytscha*) that has been designated as*
10 *an experimental population pursuant to subdivision (j) of that*
11 *section, no further authorization or approval is necessary under*
12 *this chapter for that person to take that species as identified in,*
13 *and in accordance with, the enhancement of survival permit, if*
14 *that person notifies the director in writing that the person has*
15 *received an enhancement of survival permit issued pursuant to the*
16 *federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et*
17 *seq.). The notice to the director shall include a copy of the permit.*

18 (b) *Upon receipt of the notice specified in subdivision (a), the*
19 *director shall direct the publication of that notice in the General*
20 *Public Interest section of the California Regulatory Notice*
21 *Register.*

22 (c) *The timing and extent of a take authorization under this*
23 *section shall be limited to the terms in the federal enhancement of*
24 *survival permit and shall expire upon the expiration of the federal*
25 *permit.*

26 (d) *This section shall remain in effect only until the effective*
27 *date of an amendment to Section 1539 of Title 16 of the United*
28 *States Code that alters the requirements for issuing an*
29 *enhancement of survival permit, as applicable, and as of that date*
30 *is repealed, unless a later enacted statute, that is chaptered before*
31 *the date this section is repealed, deletes or extends that date.*

32 ~~SECTION 1. Section 2080.2 is added to the Fish and Game~~
33 ~~Code, to read:~~

34 ~~2080.2. (a) For purposes of this section, the term “experimental~~
35 ~~population” means any population, including any eggs, propagules,~~
36 ~~individuals, or offspring arising solely therefrom, authorized for~~
37 ~~release under this section that meets the following requirements:~~

~~(1) The population is for some duration wholly separate geographically from nonexperimental populations of the same species. If there is for some duration geographic overlap of experimental and nonexperimental populations, experimental status shall be recognized only outside the areas of overlap, and a specimen of an experimental population that overlaps geographically with a natural population of the same species will not be recognized as a member of an experimental population while in the area of overlap.~~

~~(2) The duration of episodes of geographic separation are reasonably predictable, including geographic separations created by fixed migration patterns or natural or manmade barriers.~~

~~(3) The separation of populations does not occur solely as a result of random and unpredictable events.~~

~~(b) The department may authorize the take of three experimental populations of endangered species, threatened species, or candidate species that are listed pursuant to this chapter in defined management zones.~~

~~(c) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.~~

~~SEC. 2. Section 2080.3 is added to the Fish and Game Code, to read:~~

~~2080.3.— Nothing in this chapter prohibits the take, or the incidental take, of any endangered, threatened, or candidate species if the Secretary of the Interior or the Secretary of Commerce designates an experimental population, pursuant to subparagraph (A) of paragraph (2) of subdivision (j) of Section 1539 of Title 16 of the United States Code, of an endangered or threatened species that is listed pursuant to Section 1533 of Title 16 of the United States Code and adopts a regulation pursuant to Sections 17.81 and 17.82 of Title 50 of the Code of Federal Regulations that contains prohibitions and exceptions to the prohibitions for the designated experimental population, and the take, or incidental take, occurs in conformance with that regulation.~~

~~SEC. 3. Section 2080.5 is added to the Fish and Game Code, to read:~~

~~2080.5.—(a) Notwithstanding any other provision of this chapter, or Chapter 10 (commencing with Section 1900) or Chapter 11 (commencing with Section 1925) of Division 2, but subject to~~

1 ~~subdivision (c), if any person obtains from the Secretary of the~~
2 ~~Interior or the Secretary of Commerce an enhancement of survival~~
3 ~~permit pursuant to subparagraph (A) of paragraph (1) of~~
4 ~~subdivision (a) of Section 1539 of Title 16 of the United States~~
5 ~~Code that authorizes the take of an endangered species, threatened~~
6 ~~species, or candidate species that is listed pursuant to this chapter,~~
7 ~~no further authorization or approval is necessary under this chapter~~
8 ~~for that person to take that endangered species, threatened species,~~
9 ~~or candidate species identified in, and in accordance with, the~~
10 ~~enhancement of survival permit, if that person does both of the~~
11 ~~following:~~

12 ~~(1) Notifies the director in writing that the person has received~~
13 ~~an enhancement of survival permit issued pursuant to the federal~~
14 ~~Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).~~

15 ~~(2) Includes in the notice to the director a copy of the~~
16 ~~enhancement of survival permit.~~

17 ~~(b) Upon receipt of the notice specified in paragraph (1) of~~
18 ~~subdivision (a), the director shall direct the publication of that~~
19 ~~notice in the General Public Interest section of the California~~
20 ~~Regulatory Notice Register.~~

21 ~~(c) Within 30 days after the director has received the notice~~
22 ~~described in paragraph (1) of subdivision (b) that an enhancement~~
23 ~~of survival permit has been issued pursuant to the federal~~
24 ~~Endangered Species Act of 1973, the director shall determine~~
25 ~~whether the enhancement of survival permit is consistent with the~~
26 ~~goals of this chapter. If the director determines within that 30-day~~
27 ~~period, based upon substantial evidence, that the enhancement of~~
28 ~~survival permit is not consistent with the goals of this chapter, then~~
29 ~~the taking of that species may only be authorized pursuant to this~~
30 ~~chapter.~~

31 ~~(d) The department shall immediately publish the determination~~
32 ~~pursuant to subdivision (b) in the General Public Interest section~~
33 ~~of the California Regulatory Notice Register.~~

34 ~~(e) Unless deleted or extended by a later enacted statute that is~~
35 ~~chaptered before the date this section is repealed, this section shall~~
36 ~~remain in effect only until, and is repealed on, the effective date~~
37 ~~of an amendment to Section 1539 of Title 16 of the United States~~

- 1 ~~Code that alters the requirements for issuing an enhancement of~~
- 2 ~~survival permit, as applicable.~~

O